

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD E. KORB,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY, et al.,

Defendants.

No. C 12-3847 PJH

ORDER

Plaintiff Richard E. Korb filed this action on July 23, 2012, and filed a first amended complaint on August 1, 2012. A summons was issued on October 12, 2012, and counsel for defendant Commissioner of Social Security filed a notice of appearance on October 17, 2012. On October 22, 2012, plaintiff filed a second amended complaint.

On December 17, 2012, defendant filed a motion to dismiss for lack of subject matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1). On December 27, 2012, defendant filed an amended notice, setting the hearing for February 20, 2013. Under Civil Local Rule 7-3, plaintiff's opposition to the motion was due on December 31, 2012. No opposition was filed by that date, and none has been filed as of the date of this order. Instead, on January 11, 2013, plaintiff filed a third amended complaint.

Under Federal Rule of Civil Procedure 15, a party may amend its pleading once as a matter of course within 21 days after serving it, or if the pleading is one to which a responsive pleading is required, within 21 days after service of a responsive pleading or 21

1 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R.
2 Civ. P. 15(a)(1). Otherwise, a party may amend its pleadings only with the opposing party's
3 written consent, or leave of court. Fed. R. Civ. P. 15(a)(2).

4 Because it was not clear when defendant had been served with the summons and
5 complaint, the court allowed the filing of the second amended complaint, even though it
6 was technically improperly filed because amendment as of right is allowed only once.
7 However, the third amended complaint was clearly filed in violation of Rule 15(a), and the
8 court hereby directs that it be STRICKEN from the docket. If plaintiff wants to further
9 amend the complaint, he must either obtain the written agreement of defendant, or file a
10 proper motion for leave to amend.

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12 **IT IS SO ORDERED.**

13 Dated: January 18, 2013



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15 PHYLLIS J. HAMILTON
16 United States District Judge
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